

BEFORE THE NATIONAL PARK SERVICE

In re Special Regulations, Areas of the National Park System, National Capital Region, Special Events and Demonstrations, 83 Fed. Reg. 40,460 (proposed Aug. 15, 2018)

Regulation Identifier Number:
1024-AE45

DECLARATION OF JOHN BOARDMAN

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of eighteen and am competent to testify on the matters set forth herein.

2. I am the Executive Secretary-Treasurer of UNITE HERE Local 25 (“Local 25”) and have served in that role for over twenty years.

I. BACKGROUND

3. Local 25 is a union of hotel workers in the Washington, DC metropolitan area. The union represents over 6,500 employees working in a wide range of hotel departments, including housekeeping, public space, dining room, banquet, room service, kitchen, stewarding, bar, mini-bar, front desk, reservations, PBX, bell and door services, concierge, night auditing, laundry, valet, maintenance, night cleaning, health spas, purchasing and receiving, and storeroom. The union provides a wide range of services to its members but at its core its mission is to improve the wages, hours, and terms and conditions of employment for its members through negotiating collective bargaining agreements with employers and then ensuring that those agreements are being followed.

4. More than 30 hotels and related businesses—including many of the major properties in the hotel industry in Washington, DC and its suburbs—employ Local 25 members and are under contract with the union. Many of these hotels are in downtown Washington near

public spaces managed under the control of the National Park Service. For example, Local 25-represented hotels in Washington, DC include the following:

Beacon Hotel 1615 Rhode Island Ave NW Washington, DC 20036	National Press Club 529 14th St NW Washington, DC 20045	Marriott Marquis Washington, DC 901 Massachusetts Ave NW Washington, DC 20001
The W Hotel 515 15th St NW Washington, DC 20005	Hay Adams Hotel 800 16th St NW Washington, DC 20006	Marriott Wardman Park 2660 Woodley Rd NW Washington, DC 20008
Capitol Skyline Hotel 10 Eye St SW Washington, DC 20024	National Democratic Club 30 Ivy St SE Washington, DC 20003	Omni Shoreham Hotel 2500 Calvert St NW Washington, DC 20008
Washington Court 525 New Jersey Ave NW Washington, DC 20001	The Embassy Row Hotel 2015 Massachusetts Ave NW Washington, DC 20036	Phoenix Park Hotel 520 North Capital St NW Washington, DC 20001
Capital Hilton 1001 16th St NW Washington, DC 20036	Hyatt Regency Washington 400 New Jersey Ave NW Washington, DC 20001	The Mayflower Hotel 3636 16th St NW Washington, DC 20006
Washington Hilton 1919 Connecticut Ave NW Washington, DC 20009	Jefferson Hotel 1200 16th Street NW Washington, DC 20036	St Regis Hotel 923 16th St NW Washington, DC 20006
Embassy Suites Convention Center 900 10th St NW Washington, DC 20001	The Liaison Hotel 415 New Jersey Ave NW Washington, DC 20001	Trump International Washington D.C. 1100 Pennsylvania Ave NW Washington, DC 20004
Fairfax at Embassy Row 2100 Massachusetts Ave NW Washington, DC 20008	Loews Madison Hotel 1177 15th St NW Washington, DC 20005	
Harrington Hotel 436 11th St NW Washington, DC 20004	Mandarin Oriental Hotel 1330 Maryland Ave SW Washington, DC 20024	

5. Local 25 and its members regularly engage in demonstrations and other First Amendment expression on areas that are managed by the National Park Service (“NPS”) and that are subject to the proposed rule that NPS is presently considering—i.e., Special Regulations,

Areas of the National Park System, National Capital Region, Special Events and Demonstrations, 83 Fed. Reg. 40,460 (proposed Aug. 15, 2018) (hereinafter “Proposed Rule”).

6. Local 25 and its members have participated in demonstrations on NPS property on the National Mall, Lafayette Park, Franklin Park, Farragut Square, McPherson Square, Mount Vernon Square, and Thomas Circle.

7. Local 25 has in the past and will continue in the future to be the primary organizer of demonstrations, protests, or marches with the responsibility of obtaining a permit from NPS (if a permit is required under the governing regulations). Local 25 has typically organized such events in support of contract disputes with employers.

8. Public demonstrations in support of contract negotiations are an essential part of Local 25’s ability to negotiate better contracts and to improve the lives of its members, because those public demonstrations provide the most direct and effective way to engage Local 25’s members and the public on the issues that are at the heart of the negotiations. By educating the public about the disputed issues, Local 25 is better able to achieve its negotiation objectives to improve the working conditions for its members.

9. NPS-administered areas are critical to these campaigns by Local 25 and its members. When a demonstration or protest is sufficiently large—such that a street, sidewalk or thoroughfare is not a viable option for the event—virtually the only available public spaces near downtown employer-hotels are NPS-administered areas. And holding demonstrations in close proximity to the hotel is critical to the success of the campaign, as proximity increases the effectiveness of engaging the public about the dispute and using that public engagement to improve the working conditions for Local 25’s members.

10. For this reason, Local 25 has been—and will continue to be—the entity securing permits for NPS-administered areas in connection with demonstrations or marches in support of Local 25 in its contract disputes with employers.

11. The manner in which Local 25 and its members have and will continue to use NPS parkland varies. Sometimes Local 25 uses parkland for the demonstrations themselves, often with stationary staging and a sound system. Other times Local 25 uses the parkland as a staging area to begin or end a march. Sometimes Local 25 has applied and obtained a permit from NPS for such activity, while at other times a permit was unnecessary due to the location and size of the protest (as would be the case, e.g., for a demonstration of under 500 persons at Franklin Park and McPherson Square). Sometimes Local 25 works with vendors in connection with the event—usually a photographer or videographer whose documentation of a demonstration helps Local 25 magnify the audience for its expressive activity. In such instances it is important to Local 25 to know the date certain of the event (including, where applicable, having the NPS permit in hand) with sufficient lead time to contract with vendors.

12. As an example of Local 25 engaging in First Amendment expression on NPS parkland in furtherance of Local 25's core function, the union and its members held a march in 2004 with approximately 1,800 people in support of Local 25's fight for a citywide hotel contract. The beginning of the march was staged on federal parkland—Kalorama Park—as to which Local 25 obtained a permit.

13. In 2007, Local 25 and its members held a march of approximately 400 people through downtown Washington, DC in support of a contract fight. Local 25 used Farragut Square as a pre-march staging area, set up a temporary but stationary stage, and used a sound system and generator. Local 25 obtained a permit to use Farragut Square in this manner.

14. Local 25 and its members also participate in demonstrations that other entities have organized and arranged for the proper permitting. For example, Local 25 and its members participated in a variety of permitted activities on the Mall, including Solidarity Day in 1991, the Women’s March in 2017, and numerous demonstrations over the years in support of immigrant rights, civil rights, and reasonable gun legislation. Such demonstrations are important Local 25 and its members, as addressing broader social issues is an essential part of improving the lives of Local 25’s members. Indeed, Local 25 advertises this aspect of its mission on its website, stating that “Local 25 and its founding unions have been at the forefront of social justice movements in the Nation’s Capital for more than 75 years.”

II. IMPACT OF THE PROPOSED RULE ON LOCAL 25 AND ITS MEMBERS

15. Local 25 and its members will be harmed in a variety of respects if NPS promulgates the Proposed Rule.

Costs and Fees

16. The Proposed Rule states:

Under current NPS policy, the NPS does not charge cost recovery if the proposed activity is an exercise of a right, such as a demonstration. In current practice, the NPS recovers costs associated with special events, but not demonstrations. The NPS recovers an application processing fee and is in the process of developing a more robust cost recovery program that would allow the NPS to recover additional costs associated with special events, including administrative, equipment, and monitoring costs.

Demonstrations can have substantial impacts on resources, resulting in a financial burden to the federal government, particularly where structures are involved. The NPS specifically seeks comment on the merits of recovering costs associated with permitted demonstrations, and on how any cost recovery should be done. The NPS seeks comment on how it could establish a set of clearly defined, objective categories and criteria in advance for what costs would be recovered. These categories could include direct costs associated with event management (other than costs for law enforcement personnel and activities), set up and take down of structures; material and supply costs such as barricades and fencing needed for permitted activities; costs for the restoration, rehabilitation, and clean-up of a permitted area such as sanitation and trash removal; permit

application costs; and costs associated with resource damage such as harm to turf, benches, poles, and walkways. The NPS requests comment on whether it should establish an indigency waiver for permittees who cannot afford to pay cost recovery, and how this waiver program could be implemented to safeguard the financial information of permittees. The NPS is interested only in how this waiver could be applied to permitted demonstrations, not special events. The NPS seeks comment on how it could implement protocols to ensure that costs recovered from administering permits associated with demonstrations are documented and assessed to permittees in a uniform and appropriate manner. If the NPS decides to recover some costs associated with permit applications for demonstrations, it requests comment on how it could provide reasonable advance notice to permittees about the types and amounts of costs that could be recovered.

17. NPS's charging fees for demonstrations would burden the free speech rights of Local 25 and its members. The ability to engage in protests, marches, demonstrations and other First Amendment expression is particularly important to Local 25 and its members because they rely primarily on such activity and expression, rather than paid media, to spread their message to the public. NPS should not put a price tag on the exercise of democratic rights.

Differentiating Between “Special Event Elements” and “Demonstration Elements”

18. The Proposed Rule states:

The NPS specifically seeks comments on how it might further differentiate between the demonstration element(s) and the special event element(s) of a single activity. What factors should the NPS consider when differentiating between the demonstration and special event elements of a single activity? How should the NPS regulate activities that have elements of demonstrations and special events? The NPS seeks comments on the definitions and treatment of demonstrations and special events. What additional factors should the NPS consider when determining whether an activity is a demonstration or a special event?

19. This change threatens to burden the free speech rights of Local 25 and its members. Demonstrations by Local 25 have included, for example, music played on Local 25's sound system. Such music is an inextricable part of a demonstration for it helps to energize the crowd before a speech and helps lock-in the message after the speech. Music—were it to be deemed by NPS to be a “special event element”—could thus result in the imposition of fees

and/or additional requirements that would burden the effective presentation of First Amendment speech by Local 25 and its members.

Discretionary Revocation of a Permit

20. The Proposed Rule states:

Existing regulations allow the ranking U.S. Park Police supervisory official in charge to revoke a permit or part of a permit for a demonstration if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. Existing regulations allow the Regional Director to exercise reasonable discretion to revoke a permit for a special event at any time. The NPS is replacing these two standards of revocation with one, uniform standard that applies to both demonstrations and special events. This will give permit holders more certainty about the validity of their permit and the conditions that could result in its revocation. The NPS proposes to allow the Regional Director or the ranking U.S. Park Police supervisory official in charge to revoke a permit or part of a permit for any violation of its terms or conditions, or if the event presents a clear and present danger to the public safety, good order, or health, or for any violation of applicable law or regulation. Any such revocation shall be in writing. The NPS exercises discretion when faced with minor violations of permit conditions and seeks to work with permittees to resolve such violations prior to revoking a permit. The NPS seeks comment on whether the regulations should state that it may only revoke a permit for “material” violations of permit conditions.

21. This change—which would allow for the revocation of a permit for a violation of the permits terms committed by anyone regardless of whether the violation rises to the level of a clear and present danger to the public safety, good order, or health—threatens to burden the free speech rights of Local 25 and its members.

22. Local 25 knows from experience that, even with proper training, an individual—whether affiliated with a demonstration or not—may act in a manner that is inappropriate. For example, while Local 25 provides training both to participants and to marshals who will be overseeing the activity, including training that marshals should respond immediately to stop any improper behavior, under the proposed rule, the spontaneous and unsanctioned actions of one individual—whether part of the demonstrating group or not—could be used by NPS to shut

down the entire event even if that individual's action is not a danger to safety, order or health, and even if Local 25 marshals have addressed the problematic behavior. Such a rule would vest enormous discretion in the NPS to shut down a broad swath of events, and there is a substantial danger that NPS would exercise that discretion differently depending on whether the NPS staff happen to agree or disagree with the content of the First Amendment expression at that particular demonstration.

The 24-hour “Deemed Granted” Rule

23. The Proposed Rule states:

Section 7.96(g)(3) states that applications for demonstrations are deemed granted, subject to all limitations and restrictions applicable to the park area, unless denied within 24 hours of receipt. Permit applications that are “deemed granted” after this 24-hour period remain subject to terms and conditions that are negotiated between the applicant and the NPS. This negotiation can result in the permit application being denied, partially denied, or modified by the NPS as it receives more information from the permittee about the requested event. This is particularly the case when applicants request permits for large and complex demonstrations with structures that raise resource and public safety concerns. In some cases, the NPS receives information from the applicant in the weeks or days before the event begins. This can result in the NPS imposing permit terms and conditions just before the event in order to mitigate concerns related to park resources and public order and safety. The result is that permit applications that have been “deemed granted” are often times subject to a lengthy review process that can be confusing for permit applicants. The NPS proposes to remove the “deemed granted” language in section 7.96(g)(3) and replace it with language in section 7.96(g)(4) that better reflects how the NPS processes permit applications. These changes are discussed below.

24. Such a change would burden the free speech rights of Local 25 and its members.

The “deemed granted” rule is important because it allows Local 25 to move forward with its outreach and organizing and helps ensure the timely and expeditious processing of permit applications. Timely and expeditious processing of permit applications is important to Local 25 and its members because lead time is important to organizing and planning effective demonstrations, particularly ones with significant levels of participation and attendance.

Organizing large numbers of individuals to attend the demonstrations often takes time. Moreover, and as described above, because Local 25 regularly contracts with vendors in connection with these public demonstrations—usually a photographer or videographer whose documentation of a demonstration helps Local 25 magnify the audience for its expressive activity—any uncertainty in when or if the events will be held will impede Local 25’s efforts to secure these necessary services.

25. The proposal to allow the NPS to delay meaningful processing of applications until 40 days before a planned event—even if an application were submitted up to a year in advance of then event—would cause harm to Local 25 and its members. Some demonstrations require substantial lead time to plan properly. Waiting until 30, or 40, or 90 days before an event to process an application, in such circumstances, would derail organizing and outreach efforts.

26. Eliminating the “deemed granted” rule and replacing it with a “provisionally reserved” system would threaten to place the organizing efforts of Local 25 and/or its partner organizations in limbo and burden and obstruct Local 25’s free speech rights.

Structures Triggering the Permit Requirement

27. The Proposed Rule states:

Demonstrations involving 25 or less participants fall under the “small group exception” and do not require a permit. Except for Lafayette Park (where only speakers' platforms are allowed in accordance with a permit) and the White House Sidewalk (where no structures are allowed), current regulations state that demonstrations falling under the small group exception may not erect structures other than small lecterns or speakers' platforms. This proposed rule would further define the types of structures that small groups may erect without a permit by stating that speakers' platforms must be no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height. This size limitation is consistent with existing regulations that allow the NPS to issue a permit for “soapbox” speakers' platforms in Lafayette Park if the size of the demonstration is less than 100 persons.

28. The temporary but stationary stage that Local 25 uses is a combination of milk-crates and plywood. Though it is usually less than 3 feet in height, its length and width are 4 and 8 feet, respectively—dimensions that exceed those specified in the Proposed Rule (i.e., lecterns and platforms “that are no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height”). The stage is lightweight and does not impact the parkland in anything more than a de minimis manner. The size of the stage is an important feature in maximizing the number of people who can hear the speakers’ message. First, the stage must be large enough that the people on the stage can be seen by those attending the demonstration. Second, the stage must be large enough to accommodate multiple individuals as Local 25 often seeks to magnify its message by having people on the stage hold a banner behind the person who is addressing the demonstrators.

29. The Proposed Rule would also require a permit in every instance in which Local 25 wanted to use its stage. That would burden the free speech rights of Local 25 and its members because it would require Local 25 to go through the permitting process for demonstrations that currently do not require a permit (e.g., demonstrations of fewer than 500 persons at Franklin Park or McPherson Square). The ability to hold such demonstrations at certain locations without going through the permitting process is important to Local 25 and its members because they often need the ability and flexibility to organize and participate quickly in response to breaking news or events.

30. A timely-held demonstration or protest is an important tool for Local 25 in its ability to engage the public and its members about issues important to its members.

31. Local 25 and its members should not have to choose between delaying their message or dampening it by forgoing a reasonably sized stage that can reasonably accommodate more than one person.

The Size of a Demonstration for which a Permit Is Required

32. The Proposed Rule states:

The NPS seeks comment on whether it should lower the numbers of persons that may demonstrate in Franklin Park, McPherson Square, U.S. Reservation No. 31, and Rock Creek and Potomac Parkway without a permit. The NPS would not lower those numbers below 25 persons which is consistent the small group exception. Lowering those numbers would allow the NPS to better manage and anticipate demonstrations occurring on NPS-administered lands.

33. Such a change would burden the free speech rights of Local 25 and its members, because it would require Local 25 to go through the permitting process for demonstrations that currently do not require a permit (e.g., demonstrations of fewer than 500 persons at Franklin Park or McPherson Square). As I have previously explained, the ability to hold impromptu demonstrations of more than twenty-five people at certain locations without the delay and burden of going through the permitting process is important to the ability of Local 25 and its members to engage in meaningful and timely public expression.

The 48-hour Rule

34. The Proposed Rule states:

Section 7.96(g)(3) requires that applicants submit permit applications at least 48 hours in advance of any demonstration or special event. Under existing regulations, this requirement can be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The NPS proposes to replace this waiver language by stating that notwithstanding the 48-hour requirement, the Regional Director will reasonably seek to accommodate spontaneous demonstrations, subject to all limitations and restrictions applicable to the requested location, provided such demonstrations do not include structures

and provided the NPS has the resources and personnel available to manage the activity

35. Such a change would burden the free speech rights of Local 25 and its members.

It effectively amounts to a ban on structures for any time-sensitive protest in response to breaking news. Local 25 and its members should not have to choose between delaying their time-sensitive message or dampening it by forgoing all structures in connection with a demonstration, including, e.g., a reasonably sized stage that facilitates Local 25 and its members effectively communicating their message.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 15, 2018.



John Boardman